

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

CHRISTOPHER TABICK, on behalf of himself and all others similarly situated consumers	:	Case No: 16 CV 01420 (ERK)(RER)
Plaintiff,		
v.	:	<u>ANSWER AND</u>
CLEARSPRING LOAN SERVICES, INC. A/K/A VANTIUM CAPITAL, INC. A/K/A STRATEGIC RECOVERY GROUP	:	<u>AFFIRMATIVE DEFENSES</u>
Defendant.		

Defendant Clearspring Loan Services, Inc. (“Clearspring”), by its attorneys, Blank Rome LLP, for its Answer and Affirmative Defenses to the Class Action Amended Complaint (“Amended Complaint”) of Plaintiff Christopher Tabick (“Plaintiff”), states as follows:

Introduction

1. Clearspring avers that no response is required to Paragraph 1 as the allegations are precatory in nature. To the extent that a response is required, Clearspring denies the allegations contained in Paragraph 1 of the Amended Complaint as they call for conclusions of law.

Parties

2. Clearspring denies knowledge or information to form a belief as to Paragraph 2 of the Complaint.

3. Clearspring denies the allegations in Paragraph 3 of the Amended Complaint as they call for conclusions of law to which no response is required.

4. Clearspring denies the allegations in Paragraph 4 of the Amended Complaint.

5. Clearspring denies the allegations in Paragraph 5 of the Amended Complaint.

6. Clearspring denies the allegations in Paragraph 6 of the Amended Complaint as they call for conclusions of law to which no response is required.

Jurisdiction and Venue

7. Clearspring denies the allegations in Paragraph 7 of the Amended Complaint as they call for conclusions of law to which no response is required.

8. Clearspring denies the allegations in Paragraph 8 of the Amended Complaint as they call for conclusions of law to which no response is required.

9. Clearspring admits Paragraph 9 to the extent that Plaintiff took out a loan with First Magnus Financial Corporation for \$300,000 in 2006, and denies all remaining allegations of Paragraph 9 of the Amended Complaint.

10. Clearspring denies knowledge or information to form a belief as to Paragraph 10 of the Amended Complaint.

11. Clearspring denies knowledge or information to form a belief as to Paragraph 11 of the Amended Complaint.

12. Clearspring denies knowledge or information to form a belief as to Paragraph 12 of the Amended Complaint.

13. Clearspring denies knowledge or information to form a belief as to Paragraph 13 of the Amended Complaint.

14. Clearspring denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 14 of the Amended Complaint.

15. Clearspring denies knowledge or information to form a belief as to Paragraph 15 of the Amended Complaint.

16. Clearspring denies knowledge or information to form a belief as to Paragraph 16 of the Amended Complaint.

17. Clearspring denies the allegations in Paragraph 17 of the Amended Complaint.

18. Clearspring denies knowledge or information to form a belief as to Paragraph 18 of the Amended Complaint.

19. Clearspring denies knowledge or information to form a belief as to Paragraph 19 of the Amended Complaint.

20. Clearspring admits Paragraph 20 of the Amended Complaint.

21. Clearspring denies Paragraph 21 to the extent that the allegations call for conclusions of law to which no response is required. To the extent a response is required, Clearspring denies Paragraph 21 of the Amended Complaint.

22. Clearspring admits Paragraph 22 to the extent Plaintiff is defaulted under the terms of the mortgage and note and all remaining allegations of Paragraph 22 of the Amended Complaint.

23. Clearspring denies Paragraph 23 of the Amended Complaint.

24. Clearspring denies Paragraph 24 of the Amended Complaint.

25. Clearspring denies Paragraph 25 of the Amended Complaint.

26. Clearspring denies the allegations in Paragraph 26 of the Amended Complaint as they call for conclusions of law to which no response is required.

27. Clearspring denies knowledge or information to form a belief as to Paragraph 27 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

28. Clearspring denies knowledge or information to form a belief as to Paragraph 28 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

29. Clearspring denies knowledge or information to form a belief as to Paragraph 29 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

30. Clearspring denies Paragraph 30 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

31. Clearspring denies the allegations in Paragraph 31 of the Amended Complaint as they call for conclusions of law to which no response is required.

32. Clearspring denies the allegations in Paragraph 32 of the Amended Complaint as they call for conclusions of law to which no response is required.

33. Clearspring denies the allegations in Paragraph 33 of the Amended Complaint as they call for conclusions of law to which no response is required.

34. Clearspring denies the allegations in Paragraph 34 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

35. Clearspring denies the allegations in Paragraph 35 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

36. Clearspring denies the allegations in Paragraph 36 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

37. Clearspring denies the allegations in Paragraph 37 of the Amended Complaint.

38. Clearspring denies the allegations in Paragraph 38 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

39. Clearspring denies the allegations in Paragraph 39 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

40. Clearspring denies knowledge or information to form a belief as to Paragraph 40 of the Amended Complaint and refers the Court to the document referenced, which speaks for itself.

41. Clearspring denies the allegations in Paragraph 41 of the Amended Complaint as they call for conclusions of law to which no response is required.

42. Clearspring denies the allegations in Paragraph 42 of the Amended Complaint as they call for conclusions of law to which no response is required.

43. Clearspring denies the allegations in Paragraph 43 of the Amended Complaint as they call for conclusions of law to which no response is required.

44. Clearspring denies the allegations in Paragraph 44 of the Amended Complaint as they call for conclusions of law to which no response is required.

45. Clearspring denies the allegations in Paragraph 45 of the Amended Complaint as they call for conclusions of law to which no response is required.

46. Clearspring denies the allegations in Paragraph 46 of the Amended Complaint.

47. Clearspring denies the allegations in Paragraph 47 of the Amended Complaint as they call for conclusions of law to which no response is required.

48. Clearspring denies the allegations in Paragraph 48 of the Amended Complaint as they call for conclusions of law to which no response is required.

49. Clearspring denies the allegations in Paragraph 49 of the Amended Complaint as they call for conclusions of law to which no response is required and refers the Court to the documents which speak for themselves.

50. Clearspring denies the allegations in Paragraph 50 of the Amended Complaint as they call for conclusions of law to which no response is required.

51. Clearspring denies the allegations in Paragraph 51 of the Amended Complaint as they call for conclusions of law to which no response is required.

52. Clearspring denies the allegations in Paragraph 52 of the Amended Complaint as they call for conclusions of law to which no response is required.

53. Clearspring denies the allegations in Paragraph 53 of the Amended Complaint as they call for conclusions of law to which no response is required.

54. Clearspring denies the allegations in Paragraph 54 of the Amended Complaint as they call for conclusions of law to which no response is required.

55. Clearspring denies the allegations in Paragraph 55 of the Amended Complaint as they call for conclusions of law to which no response is required.

56. Clearspring denies the allegations in Paragraph 56 of the Amended Complaint as they call for conclusions of law to which no response is required.

57. Clearspring denies the allegations in Paragraph 57 of the Amended Complaint as they call for conclusions of law to which no response is required.

58. Clearspring denies the allegations in Paragraph 58.

59. Clearspring denies the allegations in Paragraph 59.

60. Clearspring denies the allegations in Paragraph 60 of the Amended Complaint as they call for conclusions of law to which no response is required.

61. Clearspring denies the allegations in Paragraph 61 of the Amended Complaint as they call for conclusions of law to which no response is required.

62. Clearspring denies the allegations in Paragraph 62 of the Amended Complaint as they call for conclusions of law to which no response is required.

63. Clearspring denies the allegations in Paragraph 63 of the Amended Complaint as they call for conclusions of law to which no response is required.

64. Clearspring denies the allegations in Paragraph 64 of the Amended Complaint as they call for conclusions of law to which no response is required.

65. Clearspring denies the allegations in Paragraph 65 of the Amended Complaint as they call for conclusions of law to which no response is required. Clearspring further denies any knowledge of what Plaintiff allegedly believed or understood.

66. Clearspring denies the allegations in Paragraph 66 of the Amended Complaint as they call for conclusions of law to which no response is required.

67. Clearspring denies the allegations in Paragraph 67 of the Amended Complaint as they call for conclusions of law to which no response is required.

68. Clearspring denies knowledge or information sufficient to form a belief as to the allegations in Paragraph 68 in the Amended Complaint.

69. Clearspring denies the allegations in Paragraph 69 of the Amended Complaint as they call for conclusions of law to which no response is required and refers the court to the documents referenced therein.

70. Clearspring denies the allegations in Paragraph 70 of the Amended Complaint as they call for conclusions of law to which no response is required.

71. Clearspring denies the allegations in Paragraph 71 of the Amended Complaint as they call for conclusions of law to which no response is required.

72. Clearspring denies the allegations in Paragraph 72 of the Amended Complaint.

73. Clearspring denies the allegations in Paragraph 73 of the Amended Complaint as they call for conclusions of law to which no response is required.

74. Clearspring denies the allegations in Paragraph 74 of the Amended Complaint as they call for conclusions of law to which no response is required.

75. Clearspring denies the allegations in Paragraph 75 of the Amended Complaint as they call for conclusions of law to which no response is required.

76. Clearspring denies the allegations in Paragraph 76 of the Amended Complaint as they call for conclusions of law to which no response is required.

77. Clearspring denies the allegations in Paragraph 77 of the Amended Complaint as they call for conclusions of law to which no response is required.

78. Clearspring denies the allegations in Paragraph 78 of the Amended Complaint as they call for conclusions of law to which no response is required.

79. Clearspring denies the allegations in Paragraph 79 of the Amended Complaint as they call for conclusions of law to which no response is required.

80. Clearspring denies the allegations in Paragraph 80 of the Amended Complaint as they call for conclusions of law to which no response is required.

81. Clearspring denies the allegations in Paragraph 81 of the Amended Complaint as they call for conclusions of law to which no response is required.

82. Clearspring denies the allegations in Paragraph 82 of the Amended Complaint and refers the Court to the document as it speaks for itself.

83. Clearspring denies the allegations in Paragraph 83 of the Amended Complaint as they call for conclusions of law to which no response is required.

84. Clearspring denies the allegations in Paragraph 84 of the Amended Complaint as they call for conclusions of law to which no response is required.

85. Clearspring denies the allegations in Paragraph 85 of the Amended Complaint as they call for conclusions of law to which no response is required.

86. Clearspring denies the allegations in Paragraph 86 of the Amended Complaint.

87. Clearspring denies the allegations in Paragraph 87 of the Amended Complaint and refers the Court to the Documents, which speak for themselves.

88. Clearspring denies the allegations in Paragraph 88 of the Amended Complaint as they call for conclusions of law to which no response is required.

89. Clearspring denies the allegations in Paragraph 89 of the Complaint.

90. Clearspring denies the allegations in Paragraph 90 of the Amended Complaint as they call for conclusions of law to which no response is required.

91. Clearspring denies the allegations in Paragraph 91 of the Amended Complaint and refers the Court to the Documents referenced therein, which speak for themselves.

92. Clearspring denies the allegations in Paragraph 92 of the Amended Complaint as they call for conclusions of law to which no response is required.

93. Clearspring denies the allegations in Paragraph 93 of the Amended Complaint as they call for conclusions of law to which no response is required.

94. Clearspring denies the allegations in Paragraph 94 of the Amended Complaint as they call for conclusions of law to which no response is required.

95. Clearspring denies the allegations in Paragraph 95 of the Amended Complaint.

96. Clearspring denies the allegations in Paragraph 96 of the Amended Complaint.

97. Clearspring denies the allegations in Paragraph 97 of the Amended Complaint as they call for conclusions of law to which no response is required.

98. Clearspring denies the allegations in Paragraph 98 of the Amended Complaint as they call for conclusions of law to which no response is required.

99. Clearspring denies the allegations in Paragraph 99 of the Amended Complaint as they call for conclusions of law to which no response is required.

100. Clearspring denies the allegations in Paragraph 100 of the Amended Complaint as they call for conclusions of law to which no response is required.

101. Clearspring denies the allegations in Paragraph 101 of the Amended Complaint as they call for conclusions of law to which no response is required.

102. Clearspring denies the allegations in Paragraph 102 of the Amended Complaint as they call for conclusions of law to which no response is required.

103. Clearspring denies the allegations in Paragraph 103 of the Amended Complaint as they call for conclusions of law to which no response is required.

104. Clearspring denies the allegations in Paragraph 104 of the Amended Complaint as they call for conclusions of law to which no response is required.

105. Clearspring denies the allegations in Paragraph 105 of the Amended Complaint as they call for conclusions of law to which no response is required.

106. Clearspring denies the allegations in Paragraph 106 of the Amended Complaint as they call for conclusions of law to which no response is required.

107. Clearspring denies the allegations in Paragraph 107 of the Amended Complaint as they call for conclusions of law to which no response is required.

108. Clearspring avers that no response is required to Paragraph 108 as the allegations are precatory in nature. To the extent that a response is required, Clearspring denies the allegations contained in Paragraph 108 of the Amended Complaint as they call for conclusions of law.

109. Clearspring denies the allegations in Paragraph 109 of the Amended Complaint as they call for conclusions of law to which no response is required.

110. Clearspring denies the allegations in Paragraph 110 of the Amended Complaint as they call for conclusions of law to which no response is required.

111. Clearspring denies the allegations in Paragraph 111 of the Amended Complaint as they call for conclusions of law to which no response is required.

112. Clearspring denies the allegations in Paragraph 112 of the Amended Complaint as they call for conclusions of law to which no response is required.

113. Clearspring denies the allegations in Paragraph 113 of the Amended Complaint as they call for conclusions of law to which no response is required.

114. Clearspring denies the allegations in Paragraph 114 of the Amended Complaint as they call for conclusions of law to which no response is required.

115. Clearspring denies the allegations in Paragraph 115 of the Amended Complaint as they call for conclusions of law to which no response is required.

116. Clearspring denies the allegations in Paragraph 116 of the Amended Complaint as they call for conclusions of law to which no response is required.

117. Clearspring denies the allegations in Paragraph 117 of the Amended Complaint as they call for conclusions of law to which no response is required.

118. Clearspring denies the allegations in Paragraph 118 of the Amended Complaint as they call for conclusions of law to which no response is required.

119. Clearspring denies the allegations in Paragraph 119 of the Amended Complaint as they call for conclusions of law to which no response is required.

AS AND FOR A FIRST CAUSE OF ACTION

Alleged Violations of the Fair Debt Collection Practices Act brought by Plaintiff On Behalf of Himself and the Members of the Class, As Against the Defendant

120. Clearspring incorporates herein its responses to the allegations of Paragraphs 1-119 of the Amended Complaint as if set forth in their entirety.

121. Clearspring denies the allegations in Paragraph 121 of the Amended Complaint as they call for conclusions of law to which no response is required.

122. Clearspring denies the allegations in Paragraph 122 of the Amended Complaint as they call for conclusions of law to which no response is required.

123. Clearspring denies the allegations in Paragraph 123 of the Amended Complaint as they call for conclusions of law to which no response is required.

124. Clearspring denies the allegations in Paragraph 124 of the Amended Complaint as they call for conclusions of law to which no response is required.

125. Clearspring denies the allegations in Paragraph 125 of the Amended Complaint as they call for conclusions of law to which no response is required.

126. Clearspring denies the allegations in Paragraph 126 of the Amended Complaint as they call for conclusions of law to which no response is required.

127. Clearspring denies the allegations in Paragraph 127 of the Amended Complaint as they call for conclusions of law to which no response is required.

128. Clearspring denies the allegations in Paragraph 128 of the Amended Complaint as they call for conclusions of law to which no response is required.

129. Clearspring denies the allegations in Paragraph 129 of the Amended Complaint as they call for conclusions of law to which no response is required.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred as this Court lacks subject matter jurisdiction.
3. Plaintiffs lack standing to bring claims on behalf of the alleged members of the proposed class.

4. To the extent Plaintiff was damaged, his damages were caused, at least in part, by the actions of Plaintiff or his agents, which equaled or exceeded any conduct by Clearspring.

5. All of Clearspring's actions were in accordance with federal debt collection laws.
6. Plaintiffs lack standing because they have suffered no actual damages.
7. The debt being collected was a commercial debt and thus the FDCPA does not apply.

8. Clearspring states that if it violated the FDCPA, which it denies, the violation occurred as a result of a *bona fide error*, as defined under 15 U.S.C. § 1692k(c), notwithstanding the maintenance of procedures reasonably adapted to avoid such an error.

9. Plaintiff did not dispute the debt upon receiving the initial debt validation notice. Thus, Plaintiff is now barred from contesting the debt.

10. The purported class is not so numerous as to make joinder of all members impracticable.

11. Questions of law or fact are not common to the purported class.

12. The claims and defenses of the Plaintiffs are not typical of the claims and defenses of the purported class.

13. Plaintiffs and their counsel cannot fairly and adequately protect the interests of the purported class.

14. Prosecution of separate actions by individual members of the purported class would not create a risk of inconsistent or varying adjudications with respect to individual members of the purported class that would establish incompatible standards of conduct for Clearspring.

15. Prosecution of separate actions by individual members of the purported class would not create a risk of adjudications with respect to individual members of the purported class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

16. Clearspring's alleged conduct is not generally applicable to the purported class.

17. Clearspring respectfully reserves the right to assert any additional affirmative defenses that may be revealed during the course of discovery.

WHEREFORE, Clearspring prays as follows:

- (a) That Plaintiffs are denied all requested relief and this action be dismissed with prejudice, or that judgment be entered in favor of Clearspring on all counts against Plaintiff;
- (b) That Clearspring be awarded its costs and attorneys' fees incurred in defending this action;
- (c) That the Court enter such other and further relief for Clearspring as the Court may deem just and proper.

Respectfully submitted.

BLANK ROME LLP

Dated: September 29, 2016

By: /s/ Jonathan M. Robbin
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